

Calendar No. 93

105TH CONGRESS
1ST Session
S. 950

A BILL

To provide for equal protection of the law and to prohibit discrimination and preferential treatment on the basis of race, color, national origin, or sex in Federal actions, and for other purposes.

JUNE 24, 1997

Read the second time and placed on the calendar

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IN THE SENATE OF THE UNITED STATES

JUNE 23, 1997

Mr. McCONNELL (for himself, Mr. HATCH, Mr. KYL, and Mr. SESSIONS)
introduced the following bill; which was read the first time

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Read the second time and placed on the calendar

A BILL

To provide for equal protection of the law and to prohibit discrimination and preferential treatment on the basis of race, color, national origin, or sex in Federal actions, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Civil Rights Act of
5 1997”.

1 **SEC. 2. FINDINGS AND PURPOSE.**

2 (a) FINDINGS.—Congress finds that—

3 (1) the fifth and fourteenth amendments to the
4 Constitution guarantee that all individuals are enti-
5 tled to equal protection of the laws, regardless of
6 race, color, national origin, or sex;

7 (2) the Supreme Court, in *Adarand Construc-*
8 *tors, Inc. v. Peña*, 515 U.S. 200 (1995), recently af-
9 firmed that this guarantee of equality applies to
10 Federal actions;

11 (3) the Federal Government currently conducts
12 over 150 programs, including contracting programs,
13 that grant preferences based on race, color, national
14 origin, or sex; and

15 (4) the Federal Government also grants pref-
16 erences in employment based on race, color, national
17 origin, or sex.

18 (b) PURPOSE.—The purpose of this Act is to provide
19 for equal protection of the laws and to prohibit discrimina-
20 tion and preferential treatment in the Federal Government
21 on the basis of race, color, national origin, or sex.

22 **SEC. 3. PROHIBITION AGAINST DISCRIMINATION AND**
23 **PREFERENTIAL TREATMENT.**

24 Notwithstanding any other provision of law, neither
25 the Federal Government nor any officer, employee, or
26 agent of the Federal Government shall—

1 (1) intentionally discriminate against, or grant
2 a preference to, any person or group based in whole
3 or in part on race, color, national origin, or sex, in
4 connection with—

5 (A) a Federal contract or subcontract;

6 (B) Federal employment; or

7 (C) any other federally conducted program
8 or activity; or

9 (2) require or encourage a Federal contractor
10 or subcontractor, or the recipient of a license or fi-
11 nancial assistance, to discriminate intentionally
12 against, or grant a preference to, any person or
13 group based in whole or in part on race, color, na-
14 tional origin, or sex, in connection with any Federal
15 contract or subcontract or Federal license or finan-
16 cial assistance.

17 **SEC. 4. AFFIRMATIVE ACTION PERMITTED.**

18 This Act does not prohibit or limit any effort by the
19 Federal Government or any officer, employee, or agent of
20 the Federal Government—

21 (1) to encourage businesses owned by women
22 and minorities to bid for Federal contracts or sub-
23 contracts, to recruit qualified women and minorities
24 into an applicant pool for Federal employment, or to
25 encourage participation by qualified women and mi-

1 norities in any other federally conducted program or
2 activity, if such recruitment or encouragement does
3 not involve granting a preference, based in whole or
4 in part on race, color, national origin, or sex, in se-
5 lecting any person for the relevant employment, con-
6 tract or subcontract, benefit, opportunity, or pro-
7 gram; or

8 (2) to require or encourage any Federal con-
9 tractor, subcontractor, or recipient of a Federal li-
10 cense or Federal financial assistance to recruit quali-
11 fied women and minorities into an applicant pool for
12 employment, or to encourage businesses owned by
13 women and minorities to bid for Federal contracts
14 or subcontracts, if such requirement or encourage-
15 ment does not involve granting a preference, based
16 in whole or in part on race, color, national origin, or
17 sex, in selecting any individual for the relevant em-
18 ployment, contract or subcontract, benefit, oppor-
19 tunity, or program.

20 **SEC. 5. CONSTRUCTION.**

21 (a) HISTORICALLY BLACK COLLEGES AND UNIVER-
22 SITIES.—Nothing in this Act shall be construed to prohibit
23 or limit any act that is designed to benefit an institution
24 that is an historically Black college or university on the

1 basis that the institution is an historically Black college
2 or university.

3 (b) INDIAN TRIBES.—This Act does not prohibit any
4 action taken—

5 (1) pursuant to a law enacted under the con-
6 stitutional powers of Congress relating to the Indian
7 tribes; or

8 (2) under a treaty between an Indian tribe and
9 the United States.

10 (c) CERTAIN SEX-BASED CLASSIFICATIONS.—This
11 Act does not prohibit or limit any classification based on
12 sex if—

13 (1) the classification is applied with respect to
14 employment and the classification would be exempt
15 from the prohibitions of title VII of the Civil Rights
16 Act of 1964 by reason of section 703(e)(1) of such
17 Act (42 U.S.C. 2000e–2(e)(1)); or

18 (2) the classification is applied with respect to
19 a member of the Armed Forces pursuant to statute,
20 direction of the President or Secretary of Defense,
21 or Department of Defense policy.

22 (d) IMMIGRATION AND NATIONALITY LAWS.—This
23 Act does not affect any law governing immigration or na-
24 tionality, or the administration of any such law.

1 **SEC. 6. COMPLIANCE REVIEW OF POLICIES AND REGULA-**
 2 **TIONS.**

3 Not later than 1 year after the date of enactment
 4 of this Act, the head of each department or agency of the
 5 Federal Government, in consultation with the Attorney
 6 General, shall review all existing policies and regulations
 7 that such department or agency head is charged with ad-
 8 ministering, modify such policies and regulations to con-
 9 form to the requirements of this Act, and report to the
 10 Committee on the Judiciary of the House of Representa-
 11 tives and the Committee on the Judiciary of the Senate
 12 the results of the review and any modifications to the poli-
 13 cies and regulations.

14 **SEC. 7. REMEDIES.**

15 (a) IN GENERAL.—Any person aggrieved by a viola-
 16 tion of section 3 may, in a civil action, obtain appropriate
 17 relief (which may include back pay). A prevailing plaintiff
 18 in a civil action under this section shall be awarded a rea-
 19 sonable attorney's fee as part of the costs.

20 (b) CONSTRUCTION.—This section does not affect
 21 any remedy available under any other law.

22 **SEC. 8. EFFECT ON PENDING MATTERS.**

23 (a) PENDING CASES.—This Act does not affect any
 24 case pending on the date of enactment of this Act.

25 (b) PENDING CONTRACTS AND SUBCONTRACTS.—
 26 This Act does not affect any contract or subcontract in

1 effect on the date of enactment of this Act, including any
2 option exercised under such contract or subcontract before
3 or after such date of enactment.

4 **SEC. 9. DEFINITIONS.**

5 In this Act, the following definitions apply:

6 (1) **FEDERAL GOVERNMENT.**—The term “Fed-
7 eral Government” means executive and legislative
8 branches of the Government of the United States.

9 (2) **PREFERENCE.**—The term “preference”
10 means an advantage of any kind, and includes a
11 quota, set-aside, numerical goal, timetable, or other
12 numerical objective.

13 (3) **HISTORICALLY BLACK COLLEGE OR UNI-**
14 **VERSITY.**—The term “historically Black college or
15 university” means a part B institution, as defined in
16 section 322(2) of the Higher Education Act of 1965
17 (20 U.S.C. 1061(2)).